



Section 3 and Women or Minority Owned Business (MBE/WBE) Compliance

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Minnesota Housing does not discriminate on the basis of race, color, creek, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, or sexual or affectional orientation in the provision of services.

Minnesota Housing is an equal opportunity employer.

This information will be made available in alternative format upon request.

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Introduction

Section 3 is a provision in the Housing and Urban Development Act of 1968 with a goal of providing economic opportunities to “Section 3 Residents” and “Section 3 Business Concerns” where “Section 3 Covered Assistance” from HUD is expended on a “Section 3 Covered Project.”

Section 3 applies to certain federally funded activities and the entities involved in them. See Attachment B for a depiction of how, when, where, and to whom Section 3 applies.

Chapter 1 – Section 3

1.01 What is a Section 3 Covered Project?

For Minnesota Housing's purposes, construction, reconstruction, conversion or rehabilitation of housing (construction) that is funded in whole or in part with Section 3 covered assistance.

1.02 What is a Section 3 Business Concern?

A business that can provide evidence that they meet one of the following criteria:

- At least 51% owned by Section 3 residents,
- At least 30% of its F.T. employees are Section 3 residents, or were Section 3 residents within 3 years of their first employment with the company,
- Provide evidence of a commitment to subcontract more than 25% of the dollar award of all subcontracts to business concerns that meet the first two bullets.

A business must complete Attachment F - Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability for Minnesota Housing to determine whether or not it is a Section 3 business.

1.03 What is Section 3 Covered Assistance?

With respect to Minnesota Housing's programs, it is assistance provided under most HUD housing or community development programs that is expended for work arising in connection with housing construction, reconstruction, conversion or rehabilitation of housing (construction).

1.04 What is a Section 3 Covered Contract?

A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. It does not include contracts for the purchase of supplies and materials without installation. It **does** include Deferred Loan administrators.

1.05 What is a Section 3 Resident?

A resident of the metropolitan statistical area or Non-metropolitan County in which the Section 3 covered assistance is expended who is either:

- A public housing resident; or
- A low or very low-income person.

To determine if a resident meets the Section 3 definition, the resident must complete and submit the Resident Employment Opportunity Data form (Attachment G) to the employer.

1.06 Reporting Requirements

Owners are required to collect a Section 3 Data Form from each contractor and subcontractor working on Section 3 covered projects. The forms will cover the period from October 1 of each year (the beginning of our program year) to either the completion of the project, or September 30 of the following year, whichever occurs first. The data form is attached as Attachment L.

1.07 What is a Recipient?

A “recipient” is any entity that receives Section 3 covered assistance either directly from HUD or from another recipient.

Examples of recipients would be:

- Minnesota Housing
- Developers who receive Section 3 covered assistance from Minnesota Housing and are not doing any of the construction themselves, but are contracting with others to conduct construction.

1.08 Who is not a Recipient?

- Contractors are not recipients. Contractor means any entity contracted by a Recipient to perform construction.
- The ultimate beneficiary under a HUD program is not a recipient. An example of an “ultimate beneficiary” is a:
- A tenant living in an assisted property.

1.09 Who is Affected?

- Recipients of more than \$200,000 of Section 3 covered assistance; and,
- Their contractors and subcontractors with contracts of more than \$100,000 for housing construction, **regardless of the source of funds to pay the contract.** See Attachment B.

For example, an owner (recipient) combines \$300,000 HOME funds with \$120,000 of project reserves for a total project cost of \$420,000. Even though the recipient chooses to pay the \$120,000 contract for heating system replacement with project reserves, that heating contractor is subject to Section 3.

1.10 Numerical Goals aka Safe Harbor

Minnesota Housing is evaluated according to how well it, its sub-recipients, and contractors and subcontractors meet the following numerical goals with respect to Section 3 covered projects:

- 30% of aggregate *new* hires of recipients, contractors, and subcontractors for the year are Section 3 residents.

- At least 10% of the total dollar amount of all Section 3 covered contracts for construction-type work is awarded to Section 3 business concerns.
- At least 3% of the total dollar amount of all other Section 3 covered contracts is awarded to Section 3 business concerns; for example, architectural or accounting services required by a construction contract.

1.11 Recipient Responsibilities

Minnesota Housing and its sub-recipients are recipients for purposes of Section 3. As recipients, we and they are responsible for the actions specified in 24 CFR 135.32:

- Complying with Section 3 in their own operations and in the operations of their contractors and subcontractors.
- Implementing procedures designed to notify Section 3 residents about training and employment opportunities and Section 3 covered businesses about contracting opportunities generated by Section 3 covered assistance.
- Notifying potential contractors of the Section 3 requirements and incorporating the Section 3 Clause in §135.38 in all solicitations and contracts.
- Facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to part 135 (see Attachment D).
- Obtain the compliance of contractors and subcontractors and do not enter into contracts when it has notice or knowledge that a contractor has violated part 135.
- Document steps taken to comply with part 135, the results of actions taken and impediments.
- Minnesota Housing, having distributed funds to local governments and/or owners/developers, must attempt to reach the numerical goals of §135.30; must inform the local government and/or owners/developers of Section 3 requirements; assist them and their contractors to meet Section 3's requirements and objectives; and monitor the performance of local governments with respect to the objectives and requirements of part 135.

At time of project selection Minnesota Housing will provide this Section 3 Guide packet that includes Attachments A-L to assist the owner in complying with Section 3 requirements.

1.12 Contractor/Subcontractor Responsibilities

- If the contractor/subcontractor must hire **new** employees to complete the project or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and subcontracting opportunities to Section 3 residents and Section 3 business concerns to try to reach the numerical goals specified above.

- Undertake, document, and report to the recipient their efforts to offer training and employment opportunities to Section 3 residents when hiring is required for the project; and their efforts to award contracts to Section 3 business concerns.
- Report to the recipient their hiring and contracting results.
- Include the “Section 3 Clause” in all their Section 3 covered contracts.

Recipients must provide Attachment E (Contractor/Subcontractor Section 3 Compliance Checklist) to prospective contractors before bidding, but no later than acceptance of a contractor’s bid, to make them aware of all their Section 3 responsibilities.

1.13 Sec. 135.38 Section 3 clause

All Section 3 covered contracts shall include the Section 3 clause contained in Attachment H in their bid package and contracts.

Chapter 2 – Requirements for Contracting with Minority and Women-Owned Business Enterprises

It is the policy of Minnesota Housing that minority and women-owned business enterprises (MBE/WBE) have equal access to business opportunities resulting from Minnesota Housing-financed developments and that the workforces on the development projects Minnesota Housing finances are demographically representative of the area in which the developments are located. When reviewing bid information, Minnesota Housing will consider:

- The owner's and general contractor's certification that they comply with laws prohibiting discrimination in employment and that they hire affirmatively.
- The extent to which they solicit bids from MBE/WBE's; such solicitations must be documented.
- The demographic make-up of the contractor and subcontractor's workforces.

State and Federal regulations direct that affirmative steps must be taken to assure that MBE/WBE's are used when possible. Outreach to minorities and women must be conducted and documented to the satisfaction of Minnesota Housing for contracts in excess of \$50,000.

Minnesota Housing has Participation Goals for Women and Minority Owned-Business Enterprises.

- 6% of all contract dollars let to women-owned and controlled business enterprises.
- 11% of all contract dollars let to minority-owned and controlled business enterprises in the Seven County Metropolitan Area, including the counties of: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington
- 4% of all contract dollars let to minority-owned and controlled business enterprises in Southwest Minnesota, including the counties of: Big Stone, Blue Earth, Brown, Chippewa, Cottonwood, Faribault, Jackson, Lac qui Parle, Le Sueur, Lincoln, Lyon, Martin, Murray, Nicollet, Nobles, Pipestone, Redwood, Rock, Sibley, Swift, Waseca, Watonwan, Yellow Medicine
- 4% of all contract dollars let to minority-owned and controlled business enterprises in Southeast Minnesota, including the counties of: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha and Winona
- 3% of all contract dollars let to minority-owned and controlled business enterprises in Central Minnesota, including the counties of: Benton, Chisago, Isanti, Kanabec, Kandiyohi, McLeod, Meeker, Mille Lacs, Pine, Renville, Sherburne, Sibley, Stearns, and Wright
- 6% of all contract dollars let to minority-owned and controlled business enterprises for the counties of: Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Douglas, Grant, Hubbard, Kittson, Mahnomen, Lake of the Woods, Marshall, Morrison, Norman, Otter

Tail, Pennington, Polk, Pope, Red Lake, Roseau, Stevens, Todd, Traverse, Wadena and Wilkin

- 5% of all contract dollars let to minority-owned and controlled business enterprises in Northeast Minnesota, including the counties of: Aitkin, Carlton, Cook, Itasca, Koochiching, Lake, and Saint Louis

To demonstrate compliance with Minnesota Housing's affirmative contract compliance requirements, property owners must identify jobs bid by minority-owned, women-owned, and small or disadvantaged businesses, using the Minnesota Housing contract compliance activity report. The Minnesota Housing contract compliance activity report is a data collection tool to be included in bidding documents. All contractors and sub-contractors providing bids must complete this form. If not enough contractors (especially minority/women contractors) have been solicited; Minnesota Housing reserves the right to insist work is re-bid affirmatively. Minnesota Housing may request additional documentation if necessary to assure compliance with this obligation.

2.01 Affirmatively Marketing to Women and Minority-Owned Business Enterprises, and labor surplus area firms

NOTE: A Labor Surplus Area (LSA) is defined by the US Dept of Labor as a civil jurisdiction with an unemployment rate at least 20% above the average unemployment rate for all states during the two previous calendar years. That designation can also be petitioned under exceptional circumstances, demonstrating the area experiences a significant increase in unemployment which is neither temporary nor seasonal and which was not adequately reflected in the data for the two year reference period. The US Department of Labor keeps a list of current LSA's that is updated annually.

Federal regulations establish the following affirmative contracting requirements for State, local, and Indian tribal governments as per 24 CFR 85.36 (e):

1. Minnesota Housing will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
2. The prime contractor, if subcontractors are to be let, must also take the affirmative steps listed.
3. Affirmative steps shall include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- c. Dividing total requirements, when they are economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority, and women's business enterprises;
 - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - f. Dividing total requirements, when they are economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - g. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority, and women's business enterprises;
 - h. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
4. The following steps shall be taken to notify women and minority-owned business enterprises when HOME funds are to be utilized:
- a. For all HOME funded contracts for construction, and/or purchase of supplies, equipment and services, the developer shall review of MBE/WBE resources listed below, and contact a reasonable number of those who are potential sources for quote or bid. Steps taken to contact MBE/WBE shall be documented and retained on file.
 - b. General contractors selected to work on projects funded with HOME funds shall review MHFA's directory of MBE/WBE resources, and contact a reasonable number of those who are potential sources for quote or bid.
 - c. Requests for bids, qualification and/or proposal for projects estimated to utilize appropriate media or newspaper publication.
 - d. Information on the opportunity to bid shall also be sent to the following organizations:

Association of Women
Contractors
16112 Wake Street NE
Anoka, MN 55304
763-413-0711
awcmn.org

National Association of
Minority Contractors (NAMC)
4248 Park Glen Road
Minneapolis, MN 55416
(952) 928-4667
(952) 929-1318 (FAX)
NAMC-UM.org

Attachment Index

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Attachment B	<u>How, When, Where and To Whom Section 3 Applies</u>
Attachment C	<u>Recipient Section 3 Compliance Checklist</u>
Attachment D	<u>Appendix To Part 135</u>
Attachment E	<u>Contractor/Subcontractor Section 3 Compliance Checklist</u>
Attachment F	<u>Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capacity</u>
Attachment G	<u>Resident Employment Opportunity Data</u>
Attachment H	<u>Section 3 Clause</u>
Attachment I	<u>Contractor/Subcontractor Section 3 Compliance Plan</u>
Attachment J	<u>Contractor Compliance Plan</u>
Attachment K	<u>Contractor Compliance Activity Report</u>
Attachment L	<u>Section 3 Data</u>